

FILED

DEC 13 2010

RICHARD W. WIEKING IN THE NORTHERN DISTRICT OF CALIFORNIA
CLERK, U.S. DISTRICT COURT U.S. COURTHOUSE, 450 GOLDEN GATE AVE.
NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO, CA. 94102-3483

TERRY BRITTON, RICHARD B. MUNNS,) Case No.:
GABRIEL HOLMES, SEAN ARBUCKLE,)
RICHARD N. BROWN, LIONEL GIBBS, E.)
GRIFFIN, G. DIXON, A. BARRIES, J.)
MASON, J. WILSON, JEFF BROOKS, C.)
BARKER, D. MOSLEY, M. WILLIAMS,)
CALVIN JOHNSON,)

Plaintiff,

vs.

KAMALA HARRIS; STATE OF
CALIFORNIA.

Defendant

E-filing

cv10 5647

550
new

CRB

(PR)

I. JURISDICTION & VENUE

1). This is a civil action authorized by 42 U.S.C., section 1983, to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. section 1331 and 1343(A)(3).

Plaintiffs seek declaratory relief pursuant to 28 U.S.C. section 2201 and 2202. Plaintiffs claims for injunctive relief are authorized by 28 U.S.C. section 2283 & 2284 and rule 65 of the Federal Rules of Civil Procedure.

2). The Northern District is an appropriate venue under 28 U.S.C. section 1391(b)(2), because it is where the events giving rise to this claim occurred.

PLAINTIFFS OF CLASS ACTION

3). Plaintiffs are and was at all times mentioned herein as Prisoners of the State of California, in the custody of the California Department of Corrections and Rehabilitation. A portion of the class of inmates are currently confined at San Quentin State Prison, in San Quentin, California.

ANS-644702B

1 4). Defendants Jerry Brown, California Attorney General, and Steve Cooley,
2
3 Chief District Attorney for the State of California, are responsible for the
4
5 overall reasons the California state prisons are in violation of a class of
6
7 inmate's Constitutional Rights under the 8th and 14th Amendments. This
8
9 immediate class of inmates are under their jurisdiction and have been
10
11 Discriminated Against and deprived of Equal Protection and Due Process of the
12
13 Constitution.

14 15 16 AMENDMENT VIOLATIONS

17
18 5). Plaintiffs are a class of prisoners and the complaint set forth in this
19
20 civil 1983...42 U.S.C. action is based on Eight Amendment and 14th Amendment
21
22 violations of Plaintiffs Constitutional Rights in regards to:

23
24 (A) Discrimination, (B) Due Process, (C) Equal Protection, (D) Cruel and
25
26 Unusual Punishment.

27
28 The following details will support the above contentions:
29

30 31 V 32 INTRODUCTION AND BACKGROUND

33
34 In March of 1994, the "Three Strikes Law" was enacted under the "Urgency
35
36 Legislative Act". Governor Pete Wilson, signed California "Three Strikes"
37
38 measure into law on March 7, 1994.

39
40 The Three Strikes Law applies to anyone who has one or more prior serious
41
42 or violent felony convictions. If you have two or more prior serious or
43
44 violent "strikes", your term for the new felony conviction will be minimum of
45
46 25-years to life in prison. Any new felony conviction will require a Three
47
48 Strikes sentence. Please be advised: A misdemeanor, by the letter of the law,
49
50 is not the equivalence of a felony according to the writing of the law.

1 In 1994, the Three Strikes ballot measure in California, passed with 72
2 percent of the vote, after 12-year-old Polly Klass, who was kidnapped from
3 her slumber party and murdered while her mother slept down the hall. When the
4 killer turned out to be a violent offender recently granted parole, support
5 surged for the "Three Strikes ballot initiative, which promised to keep
6 "career criminals" who rape women, molest children and commit murder, behind
7 bars where they belong."
8

9 However, the complete text of the bill swept far more broadly. Under
10 California's version of the Three Strikes, first and second strikes must be
11 either violent or serious. These include crimes like murder, attempted
12 murder, rape, child molestation and armed robbery. But in California,
13 "serious" is a term of art that can also include crimes like petty
14 theft....possession of very small amounts of drugs for personal use....Vehicle
15 codes....non-confrontational burglaries....and the likes. And after a second
16 strike conviction, almost any infraction beyond jaywalking, can trigger a
17 Third Strike and the life sentence that goes with it.
18

19 California's repeat-offender law is unique in this stringency. Twenty-
20 five other states have passed Three Strikes laws, but only California
21 punishes minor crimes with the penalty of life sentences. About 3,700
22 prisoners in the state of California are serving life for a Third Strike that
23 was neither violent nor serious, and more specific, not even a felony,
24 according to the true legal definition. That's more than 40 percent of the
25 total Third Strike population of about 8,500. And what's even more disturbing
26 is the fact that California is now in the midst of fiscal calamity.
27 Supreme Court Justice Anthony Kennedy, who had been a judge in California,
28 recently bemoaned state sentencing, and spending on prisons. In an address at
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1 Pepperdine University, he stated that, "The Three Strikes law sponsor is the
2
3 correctional officer's union, and that is sick!" And yet Schwarzenegger, has
4
5 vowed not to touch the law.
6

7
8 **SUPPORTING FACTS**
9

10 Over 40% of the Three Strikes convictions are from Los Angeles County,
11
12 far more than any other county in the state of California, or any other place
13
14 in the country. The most common Strike charges are: (1) Drugs, (2) Theft, (3)
15
16 Burglaries due to drug addictions.
17

18 Sadly, throughout the state of California, there has been a
19
20 "discrimination" application in this Three Strikes law, throughout the years
21
22 since the enactment March 7, 1994. As of the year 2003, there are 37 African
23
24 American females out of a total of 72, and 3,204 African American men out of
25
26 a total of 7,162, which make up a total of 45% of all Third Strike cases in
27
28 California. (See exhibit "A")
29
30

31 California prisoners who are subject to the Three Strikes law claim that
32
33 their sentences are in violation of the Equal Protection Clause of the 14th
34
35 Amendment, because the people's discretionary capability on whether or not to
36
37 apply this law consistently reveals that on case by case analysis its
38
39 implementation is heavily dependent upon factors such as race, color,
40
41 ethnicity and creed, while inspecting the same class of criminal accusation
42
43 of defendants. (See Elsa Y. Chen, Santa Clara University, Assistant
44
45 Professor, Department of Political Science, Director Public Sector studies,
46
47 500 El Comino Real, Santa Clara, California, 95053-0320, Tele. (408) 551-7055
48
49 fax (804) 551-6061, echen@scu.edu. Compare, "Impact of 'Three Strikes and
50
You're Out' on crime trends in California and throughout the United States,

1 "found in the "Journal of Contemporary Justice, Criminal Justice, Vol. 24
2
3 N0.4" at <http://ccj.sagepub.com> hosted at <http://onlinesagepub.com>. (See
4
5 exhibit "B")
6
7

8 Three Strikes convicted per year from 1994-2001 are (457) per year,
9
10 compared to Three Strikes convicted per year from 2001-2010, which was (54),
11
12 403 per year less than the previous years of 1994-2001. These statistics
13
14 supports Plaintiff's argument of being denied Equal Protection under the 14th
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16 Amendment, Discrimination under the 8th Amendment, Due Process, Cruel and
17
18 Unusual Punishment.
19
20


21 In 2005, 138,000 felons paroled, and in 2008, 3 years later, 60% returned
22
23 to prison, proof that the Three Strikes law does not work. The Three Strikes
24
25 law is also contributed to a rapid aging of California's prison system in one
26
27 and a half decades. Since the law was instituted exposing the inherent flaws
28
29 in a law that funnels a growing share of resources to an aging population
30
31 whose crime production was already on the decline. 83% or 24,900 of the Three
32
33 Strikes inmates are 40 years of age and older, having significant
34
35 consequences for effectiveness of the "Three Strikes", causing sky-rocketing
36
37 medical expenses for the state of California.
38

39 Also under the charges of Equal Protection, Discrimination, Due Process,
40
41 Cruel and Unusual Punishment, Three Strikes inmates are forced to serve 100%
42
43 of a 25-to-life sentence whereas the rest of the California prison population
44
45 are serving either one-half or eighty percent of their sentences, with the
46
47 exception of prisoners sentenced to life without the possibility of parole,
48
49 or the death penalty.
50

1 Three Strike inmates are the only group of inmates forced to serve 100%
2
3 of their sentence, which constitutes as a Federal Sentence not a State
4
5 sentence guideline. It also should be noted that incidents of murder, rape
6
7 and aggravated assaults has risen since the year of 2002.

8
9 This class action has arisen from the injustice of the California
10
11 Sentencing Scheme. (See supporting documents)
12
13 California's determinate sentencing law (OSL), bears a remarkable similarity
14
15 to both the Sentencing Scheme in Blakely, and the New York "PFO" statute.
16
17 Under the "OSL", substantive offenses were assigned upper, middle and lower
18
19 range maximum sentencing, as in petitioners' case.
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DATED THIS 24th DAY OF Nov, 2010


#D-03658 5-N-73L

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DECLARATION OF SERVICE BY MAIL

I, TERRY BRITTON, the undersigned, declare that I am
Printed Name of Declarant
 over the age of 18 years, a citizen of the United States of America, and am not a
 party to the cause within. My residence address is:

CDCR Number: D-03658 Housing: 5-N-73L
 California State Prison, San Quentin
 San Quentin, CA 94974

On NOV 29th, 2010 I served the following document(s):
Month/Day Year

PETITION OF WRIT HABEAS CORPUS

on the parties and at the addresses described below by placing them in a sealed
 envelope with postage fully prepaid, and presenting them to Corrections
 Department staff for mailing in the United States Mail as per the regulations
 governing outgoing confidential legal mail at California State Prison, San Quentin.

NORTHERN DISTRICT OF CALIFORNIA
U.S. COLETHOUSE,
450 GOLDEN GATE AVE.
SAN FRANCISCO, CALIF. 94102-3483

I swear under penalty of perjury that the foregoing is true of my own personal
 knowledge. Executed this 29th day of NOV, 2010
Day Month Year
 at San Quentin, CA, County of Marin.

Terry Britton
Signature of Declarant

Elly Britton #D-03658
S.P. S. P. 5-N-73L
San Quentin, Calif. 94794

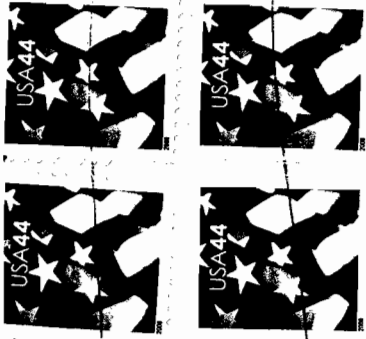
IN THE Northern District of California
U.S. Courthouse, 450 Golden Gate
San Francisco, CA. 94102-3483

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NOV 20 2010

U.S. District Court
Northern District of California

Pwr



IN THE Northern District of California
U.S. Courthouse, 450 Golden Gate Ave.
San Francisco, CA. 94102-3483

Per

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NOV 8 2010
U.S. District Court
Northern District of California

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Y. Blane E.



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